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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,557	08/06/2001	Willem Antoon Van Peperzeel	212300US6	7045
22850	7590	06/02/2004	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			SCHLAK, DANIEL K	
			ART UNIT	PAPER NUMBER
			3653	

DATE MAILED: 06/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/921,557

Applicant(s)

VAN PEPERZEEL ET AL.

Examiner

Daniel K Schlak

Art Unit

3653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23, 25 and 26 is/are pending in the application.
- 4a) Of the above claim(s) 25 and 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Claims 25 and 26 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group II, there being no allowable generic or linking claim. Election was made **without** traverse in the paper received 3/9/04.

Claim Objections

Claim 7 is objected to because of the following informalities:

The quotations around the word "Rufftop" should be removed. The term has already been described in the specification. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites, in lines 8 and 9, "and further objects, as well as for the manual sorting of batteries and other objects..." The terms "and further objects" and "and other objects" are by definition indefinite. The last phrase of the claim is a tack-on, attached

via "as well as" and it is unclear whether this is integral to the claim or not. The stated use of the re-sorting stations has been recited, why then another? If this is appropriate, why is it done via the recitation "and other objects"?

Claim 2 recites "and further objects, as well as for the manual sorting of batteries and further objects..." in lines 8-9. This recitation suffers the same deficiencies as similar subject matter already rejected in claim 1.

Claim 11, in lines 4-5, goes on to further recite the "further objects". This recitation also should be re-phrased.

Claim 13 recites "connects to said sloping conveyor belt at about $\frac{1}{4}$ the length...". The term "the length" is without antecedent basis. Conveyors have many lengths associated therewith. Also, how does something connect "at $\frac{1}{4}$ " of a length? What does this mean anyway? From where to where is this length measured?

Claim 14 recites the limitation "said pre-sorting..." in lines 1-2. There is insufficient antecedent basis for this limitation in the claim. Applicant is reminded that the pre-sorting belt was recited in claim 11, not in claim 2.

Claim 14 also recites "and further objects", which, by the explanation for claim 1 rejection above, is inherently indefinite.

Claim 20 recites a "so-called" Jacob's ladder. Well, is it called that or not? As the specification has defined the ladder, why now call it "so-called"? The claims are hardly the place for lexicography or speculations on how things are called. The term "so-called" is indefinite by definition.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Before setting out to make the rejections, the Examiner feels it important to make a few points clear on the interpretations of the claim language.

To begin with, the claims are extremely broad. From the beginning, the main components of claim 1 are defined as “pre-sorting station” and “re-sorting station”, and then an intended use is given them via the word “for”. In the instant case, Applicant’s “stations” are in fact conveyor belts. The “pre-sorting station” has a sloped conveyor belt and the two “re-sorting stations” have flat belts. As concerns claim 1, there is *no structural limitation whatsoever* that defines the word “station” to be anything more than a surface, a bucket, etc. The word “station” means little more than a place where something can be done. Thus, claim 1 could be anticipated by three buckets in a room, or three tables, or a yard. Who is to say that three people couldn’t sit down at the three buckets or tables, the first having his bucket/table full of batteries and deciding, of them, which go to the first secondary person and which to the second secondary person. The first and second secondary sorters will put good batteries of types one and two into their respective buckets/tables, while discarding debris. From the foregoing, claim 1 is

infinitely broad. The intended use has no weight in the claim's patentability, because the stations are merely stations wherein people could make such judgments, and people could manually sort round from prismatic batteries, batteries from debris, it would be hoped.

Thus, new art has been found to highlight the broadness of the claims. Claim 2 further limits claim 1 and provides for "three conveyor belts, one sloped and being connected at each end to the other two". It cannot be said that even claim 2, seemingly narrow but upon inspection quite broad in itself, claims much more than this simple statement. When one is simply making an apparatus-type claim for three conveyors, it really cannot be purported that what is taking place upon the three conveyors really has anything to do with patentability; and it cannot be denied that these apparatus claims boil down to little more than a few conveyors. What a person might walk up to one or another of them, or all of them, and do, is quite beside the point. A conveyor is a conveyor is a conveyor. A sloped conveyor is a sloped conveyor, and what might roll down it and what might stick with it on its upward journey do not change the nature of the conveyor itself.

Claims 1-4, 7, 10-13, and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by US 3,757,945 to Keiter, Jr.

Keiter teaches the sloped conveyor, connected at its upper end to a first re-sorting conveyor and at its lower end to a second resorting conveyor. Anyone could manually pick items from the re-sorting conveyors. A pre-sorting conveyor belt (18) is

between the intake station and the outlet stations (1st sub-outlet and 2nd sub-outlet stations, at the end of the 1st and 2nd re-sorting conveyors, respectively). A so-called (called such by the Examiner) Jacob's ladder is shown by element (21). As the sloping conveyor runs a circuit through 360 degrees, it at exactly two points will be 21.5 degrees. On its run-up from 0 m/s to full speed, the speed 0.8 m/s would surely be reached, albeit momentarily. The top of the conveyors is all of a rough top, the word "rough" being relative to begin with.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,411,147 to Bond.

Bond shows, in figure 12, a sloping conveyor attached at its lower end to a second re-sorting manual pick table conveyor, and at its higher end to a first re-sorting manual pick table conveyor. Round batteries on sloped conveyor (59) would certainly roll backwards to the second re-sorting station. As the sloping conveyor runs a circuit through 360 degrees, it at exactly two points will be 21.5 degrees. On its run-up from 0 m/s to full speed, the speed 0.8 m/s would surely be reached, albeit momentarily. The top of the conveyors is all of a rough top or "Rufftop", the word "rough" being relative to begin with. The pre-sorting station is between the intake station (to the far right of, and beyond, figure 12) and the outlet station (12).

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by US 4,515,276 to Feller et al.

Feller teaches the pre-sorting station (10), attached at its upper end to a first re-sorting station (44) into which anyone could stick his/her hand and pull out unwanted matter, and a second re-sorting station (46) at the lower end of the pre-sorting station, into which anyone could stick his/her hand and pull out unwanted matter – this action could be construed as “re-sorting”. Again, in the apparatus claim, there is no need for the Examiner to prove that anyone would indeed do such a thing. A station is simply a place where something could be done.

Claims 1-7, 9, 10, 18, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,339,961 to Mayhak.

Mayhak's pre-sorting station is the sloped conveyor running from, at one end, a second re-sorting station comprising a second belt (34) and at its other end a first belt (42), which comprise the second and first re-sorting stations, respectively (see figure 1). Between the sloped conveyor (pre-sorting station) and the 1st re-sorting conveyor there is a re-screening separator. Anyone could manually pick items from the re-sorting conveyors. As the sloping conveyor runs a circuit through 360 degrees, it at exactly two points will be 21.5 degrees. On its run-up from 0 m/s to full speed, the speed 0.8 m/s would surely be reached, albeit momentarily. The top of the conveyors is all of a rough top, the word “rough” being relative to begin with. This particular devices has a first outlet station (to the right of the sloped conveyor, under belt 34, out of where will fall any excessively round object onto the ground, which is also part of the 2nd re-sorting station)

Art Unit: 3653

and two sub-outlet stations, one the exit from the screen and the other the exit from the 1st re-sorting conveyor.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over any of the above references.

None of the above references teach the plastic materials of these claims.

"PVC", "smooth plastic material", and "laminated, reinforced polyester" are all known materials for conveyor belts. They offer durability, and flexibility when formed in thin sheets, and create an ideal conveying surface and offer a wide range of coefficients of friction, which can be achieved by treating the surfaces any number of ways. It would be obvious to one of ordinary skill in the art to make such a material selection based upon the frictional and durability requirements demanded in the field of use. PVC and polyester are of the most common in this endeavor, for they last longer than rubber, stay taut on the rollers better than rubber, offer the ability to be treated to effect different surfaces, none of these above traits being exhibited by metal, wood, cloth, etc.

Conclusion

Art Unit: 3653

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


Due to the infinite broadness of claim 1, the extreme broadness of claim 2 and others, the Examiner has foregone application of all available art, until the claims have been significantly narrowed by amendment.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel K Schlak whose telephone number is 703-305-0885. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Walsh can be reached on 703-306 - 4173. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

dkS


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